

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Robert R. Boas (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated November 18, 2024. For reasons discussed below, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent was employed as a Correctional Administrator for California State Prison, Calipatria, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS.

Respondent submitted an application for Service pending Industrial Disability Retirement (SR pending IDR) based on a cardiological (hypertension) condition on November 15, 2023, and has been receiving service retirement benefits since December 1, 2023.

As part of CalPERS' review of Respondent's medical condition, Kirk Y. Chang, M.D., a board-certified Cardiologist, performed an Independent Medical Examination (IME). Dr. Chang interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Chang opined that Respondent's claimed cardiac condition is not disabling.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 17, 2024. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Chang testified in a manner consistent with his examination and the IME report. Dr. Chang testified that Respondent's hypertension was not disabling. And while Respondent does report palpitations, he does not have a diagnosed arrhythmia. Dr. Chang did not believe Respondent had any work restrictions as a result of hypertension. Therefore, Dr. Chang opined that Respondent is not substantially incapacitated.

Respondent testified on his own behalf that he began experiencing cardiac issues sometime between 2014 and 2015. He has a history of high blood pressure. He was hospitalized once due to very high blood pressure. He underwent testing including an electrocardiogram with an impression of “sinus bradycardia with sinus arrhythmia”. Once Respondent’s blood pressure was under control, he was released, advised to follow up with his primary care physician, and placed on workers’ compensation leave. His workers’ compensation doctor diagnosed him with hypertensive heart disease and an “unknown type of cardiac arrhythmia”, concluding that his conditions were industrially caused. Respondent submitted medical records from his treating physicians to support his appeal but did not call any medical providers to testify. The medical records were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but cannot be used to support a finding.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent carried the burden of proof to establish by a preponderance of the evidence that he is incapacitated from performance of his duties as a Correctional Officer. The ALJ found that the medical evidence failed to demonstrate that Respondent is substantially incapacitated for the performance of his usual duties. Because Respondent did not present any medical evidence that would indicate that he is substantially incapacitated from performing his duties, the ALJ found that he failed to carry his burden of proof. As a result, the ALJ concluded that Respondent is not eligible for industrial disability retirement.

Respondent has not presented any new evidence that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the January 13, 2025, meeting was well reasoned based on the credible evidence presented at hearing. Therefore, for all the above reasons, staff argues that Respondent’s Petition for Reconsideration should be denied by the Board.

March 19, 2025

Elizabeth Yelland
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